IN THE

Supreme Court of the United States

October Term, 1967
No. 1228

TOOL RESEARCH AND ENGINEERING CORPORATION,

Petitioner,

vs.

HONCOR CORPORATION,

Respondent.

Motion for Leave to File Petition for Rehearing of Order Denying Petition for Writ of Certiorari Out of Time.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Tool Research and Engineering Corporation, hereby respectfully moves this Court for an Order permitting it to file its Petition for Rehearing of the Order Denying its Petition for Writ of Certiorari, Out of Time.

This Motion is based on each and all of the following grounds:

1. On May 22, 1967, this Court made its Order Denying the Petition for Writ of Certiorari in the within cause.

2. Sidney Dorfman, Esq., Petitioner's general counsel, was hospitalized from the end of March, 1967, until June 3, 1967, with a critical gastric condition.

3. On June 3, 1967, Mr. Dorfman was released from the hospital under twenty-four hour medical and nursing supervision and was rehospitalized on June 30, 1967, because of deterioration in his condition.

4. Mr. Dorfman passed away on July 11, 1967.

5. As a result of Mr. Dorfman's serious illness, the undersigned, Lawrence H. Nagler, Esq., a member of the California Bar, but not of the United States Supreme Court Bar, assisted Mr. Dorfman in the preparation of the Petition for Writ of Certiorari, as well as the Petition for Rehearing of the Order Denying said Petition.

6. The Petition for Rehearing of the Order Denying the Petition for Writ of Certiorari was completed and delivered to Petitioners printer, Parker & Son, Inc., 241 East 4th Street, Los Angeles, California 90013, on June 14, 1967.

7. The last day for filing the Petition for Rehearing was Friday, June 16, 1967, and the undersigned was assured by said printer that the document would be received by the United States Supreme Court on the morning of June 16, 1967, within the time permitted under Rule 58 of the Rules of the Supreme Court of the United States.

8. The Petition for Rehearing was printed and mailed to the United States Supreme Court on June 15, 1967, but Mr. Richard Shean, the Director of Printing of Parker & Son, Inc., mistakenly sent said Petition for Rehearing by Air Express, rather

than by Emery Air Freight, whereas if the document had been sent by the latter method, it would have reached this Court within the time alloted under Rule 58, and as promised to Petitioner. See the attached Declaration by Richard Shean, marked Exhibit "A" and incorporated by reference herein, as though fully set forth.

9. The Petition for Rehearing contains clarification of matters of substantial national importance regarding the absence of definitive guidelines in the area of Patent Law applicable to the within case, with the resultant derogation of the Constitutional intent of promoting the useful arts in the granting of a patent.

As a result of the above-noted difficulties in the preparation of the Petition for Rehearing and the mistake of Petitioner's printer, forty (40) copies of the Petition for Rehearing were received by the Clerk of this Court on Monday, June 19, 1967, one business day after the time provided in Rule 58 for the filing of such Petitions.

Wherefore, Petitioner prays for an Order granting its Motion for Leave to File its Petition for Rehearing of Order Denying Petition for Writ of Certiorari, Out of Time.

LAWRENCE H. NAGLER,
Attorney for Petitioner.

Order.

The Motion having been read and considered, and good cause appearing therefrom, it is hereby Ordered that Petitioner be permitted to file its Petition for Rehearing of Order Denying Petition for Writ of Certiorari, out of time.

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Justice of The Supreme Court
of The United States

EXHIBIT "A"

Declaration of Richard Shean.

State of California, County of Los Angeles—ss

I, Richard Shean, Declare as Follows:

1. I am the Director of Printing of Parker & Son, Inc., 241 East 4th Street, Los Angeles, California 90013.

2. On June 14, 1967, Lawrence H. Nagler, Esq., delivered to me Petitioner's Petition for Rehearing of Order Denying Petition for Writ of Certiorari, and informed me that said document had to be filed with the Clerk of the Supreme Court of the United States during business hours, no later than Friday, June 16, 1967. I assured Mr. Nagler that the document would be filed within the permitted time.

3. The document in question was printed and shipped by Air Express on June 15, 1967, when it should have been shipped by Emery Air Freight.

4. Had the document been mailed by the latter method, it would have arrived at the office of the Clerk of the Supreme Court of the United States during business hours on June 16, 1967, but due to the fact that I did not make a written notation on the records of Parker & Son, Inc., to the effect that this document was to be shipped by Emery Air Freight, it was not so shipped.

5. As a result of this mistake in the records of Parker & Son, Inc., the document did not arrive at the Office of the Clerk of the Supreme Court of the United States until Monday, June 19, 1967, one busi-

ness day after the time permitted under Rule 58 for the filing of such petitions.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on July 21, 1967 at Los Angeles County, California.

RICHARD SHEAN

Subscribed and sworn to before me this 21st day of July, 1967.

MARGARET FALES,
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires January 11, 1970.